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Chairman: Mr. Belinga-Eboutou ..... (Cameroon)
later: Mr. Priputen ..... (Slovakia)

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The meeting was called to order at 3.10 p.m.

Agenda item 117: Human rights questions (*continued*)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (A/58/118, A/58/118/Corr.1, A/58/121, A/58/181, A/58/181/Add.1, A/58/185, A/58/185/Add.1, A/58/185/Add.2, A/58/186, A/58/212, A/58/255, A/58/257, A/58/261, A/58/266, A/58/268, A/58/275, A/58/276, A/58/276/Add.1, A/58/279, A/58/296, A/58/309, A/58/317, A/58/318, A/58/330, A/58/380 and A/58/533)

(c) Human rights situations and reports of special rapporteurs and representatives (A/58/219, A/58/448, A/58/127, A/58/427, A/58/379, A/58/334, A/58/218, A/58/338, A/58/534, A/58/325, A/58/393 and A/58/421)

(e) Report of the United Nations High Commissioner for Human Rights (A/58/36)

1. **Mr. Peter Leuprecht** (Special Representative of the Secretary-General for Human Rights in Cambodia), introducing his report on the human rights situation in Cambodia (A/58/317), reiterated that Cambodia was essentially beset by four evils: poverty, violence, corruption and "lawlessness" (as opposed to the rule of law) – an analysis personally shared by the Prime Minister Hun Sen. The National Assembly elections of 27 July 2003 had nevertheless constituted an important step towards the democratization of Cambodia. The electoral campaign had been characterized by greater freedom of expression and easier access to the media than earlier campaigns and, generally speaking, the voting had been calm and orderly, despite instances of intimidation and violence, even murder, before and after the elections, and although the freedoms of assembly and expression had been arbitrarily restricted in the months preceding the campaign. It should be noted that the National Election Committee (NEC) had not been particularly eager to sanction those violations.

2. The Special Representative strongly deplored that the members of several political parties, particularly Sam Rainsy and the United National Front for an Independent, Neutral, Peaceful and Cooperative Cambodia (FUNCINPEC) had used the elections as an occasion for xenophobic rhetoric against the Vietnamese and that at the same time ethnic Vietnamese had been victims of harassment.

3. The Special Representative noted that Cambodians had multiple needs. They needed respect for the principles of due process and human rights; separation of powers; transparency and neutrality of public institutions; equality of access to justice, health care and education; poverty reduction; protection of the environment, particularly forests; protection from sexual exploitation and trafficking in persons; civil-society capacity building; and leaders serving the interests of the population, not their own. They also needed measures that would heal their wounds and help them to come to terms with their recent history. In that connection, the trial of the Khmer Rouge should have taken place much earlier. As things stood, it should be hoped that the agreement signed with the United Nations in June 2003 would be quickly ratified and implemented and an information and awareness campaign would accompany the trial.

4. Despite Cambodia's progress towards peace, harmony, democracy and respect for the rule of law and human rights, much remained to be done and the international community's support was indispensable. Recalling the deafening and shocking silence kept by the United Nations during the Cambodian tragedy and the subsequent litany of commitments to help Cambodia, the Special Representative deeply deplored that nothing in the draft resolution showed that the General Assembly intended to further examine the human rights situation in that country. That seemed to be a political decision consonant with the regrettable tendency to abandon a practice that, for more than 30 years, had allowed the United Nations to examine the situation in specific countries and to build its own capacities in the area of human rights. Considering United Nations activities related to human rights in any country as a type of harassment could only be due to genuine or deliberate misinterpretation. In the particular case of Cambodia, attempts to diminish the commitment of the United Nations and the assistance that it provided in the area of human rights were by no means supported by all of the country's political authorities and forces. The Cambodian civil society, neglected and discredited by some of those wielding political power, also opposed such attempts.

5. **Mr. Ouch Borith** (Cambodia), commenting on the report of the Special Representative, underlined that after 20 years of war, violence and destruction, Cambodia was currently becoming a modern democratic society, as attested by the elections of 1993, 1998 and July 2003. In that connection, the report should have mentioned the praises received from national and international observers and the commendations for electoral calm and freedom contained in reports by the European Union, the Asian Network for Free Elections and other bodies. It should have also indicated that the civil servants assigned to the polling and counting stations had performed their duty conscientiously and meticulously. Not all of them had been members of the Cambodian People's Party (PPC), and some had even belonged to the opposition. Moreover, representatives of FUNCINPEC, Sam Rainsy, PPC, the Committee on Free and Fair Elections and Nicfed had been present at the polling stations, free to contest any procedure. Furthermore, the report mentioned neither the opposition parties' incitements to racial discrimination nor the US$21.5 million pledge to Cambodia in the event that Mr. Hun Sen should not have been elected prime minister – a flagrant case of interference in the domestic affairs of the country and attempted vote-buying.

6. Concerning legal and judicial reform, the Government had set up (on 19 June 2002) a special board to accelerate the process and the Council of Ministers had adopted (on 20 June 2003) a "Justice Sector Reform Programme", which focused on seven points: better protection of individual rights and liberties; modernization of the legal framework; easier access to judicial information; qualitative improvement of legal procedures and services; strengthening the legal system and the judiciary in order to establish a climate of confidence and ensure the independence of the courts; introduction of alternative methods for settling disputes, particularly through arbitration; and reinforcing the legal and judicial institutions.

7. Regarding land- and forest-related issues, since the Land Law had come into effect (30 August 2001), real-estate property titles were issued by the competent bodies and as a result the number of disputes had been considerably reduced. The Sub-Decree of 19 March 2003 on Land Concessions for Social Purposes aimed at social improvements, particularly by allocating land for residential use and/or subsistence cultivation to poverty-stricken people, persons relocated as a result of infrastructure changes or victims of natural disasters. Land concessions granted to various felling and rubber companies and farming units did not conflict with the interests of the population – defended by the Forestry Law (which came into effect on 31 August 2002) and the decree on the management of forest concessions – nor were they detrimental to its living conditions, since nearby inhabitants benefited from concessionary activities, which provided employment and infrastructure facilities (roads, bridges and schools). The Government monitored the implementation of contractual obligations and activities: as a result of management problems, it had ceased cooperating with a number of companies that had received concessions covering over 3 million hectares.

8. Concerning instances of lynching and the condition of the prison population, the Government had organized seminars and vocational training workshops to promote respect for the rule of law and human rights among police and military officers. Lynching was no longer practised in Cambodia and the allegations in the Special Representative's report were based on non-identified sources and did not specify where lynching was supposed to have occurred. Moreover, the report did not accurately reflect the prison situation. The Government had renovated the prisons of every province and town in the country. A new prison had been built in the Siem Reap province and the Australian Government had funded the construction of another prison in the Kandall province. The report drew general conclusions on the basis of isolated cases of prison overcrowding that persisted in such small provinces as Kompong Thom, where prisoners were temporarily assembled for transfer to other penitentiaries.

9. Regarding the political asylum issue, the speaker recalled that, in the past, Cambodia had fulfilled its obligation by fully cooperating with the Office of the United Nations High Commissioner for Refugees (UNHCR) in view of the evacuation of the Vietnamese Montagnards (ethnic minorities from Viet Nam's central highlands) towards their final destination – the United States. In that connection, it was appropriate to clearly distinguish between, on the one hand, refugees and displaced persons and, on the other hand, illegal immigrants and to note that UNHCR had, without the consent of the Cambodian authorities, granted refugee

status to some foreigners who had entered the Cambodian territory illegally – an act that encouraged trafficking in persons and illegal immigration. Furthermore, the report described cases that had already been resolved, in order to create a negative impression by failing to acknowledge the efforts put forth by the Cambodian Government.

10. Lastly, the speaker contested the objectivity of the report concerning the trial of Khmer Rouge. He challenged in particular some comments from the Special Representative who indirectly blamed Cambodia for not having brought the Khmer Rouge to trial, which was completely inaccurate. The report made no mention of the fact that in 1979 a trial against senior Khmer Rouge figures took place in Phnom Penh. It also failed to recall that diplomatic manoeuvres and Cold War subtleties had helped the Democratic Kampuchea of the Khmer Rouge to have a seat in the United Nations General Assembly for more than ten years (1979-1993); and that, in the Paris Peace Accords, that genocidal regime had been recognized as one of Cambodia's four legitimate factions. In fact, the process of bringing the Khmer Rouge to trial, eventually leading to the signature of an agreement on their prosecution between the Cambodian Government and the United Nations in June 2003, had been launched only in 1996, when the Khmer Rouge had been eliminated politically and militarily by the Royal Cambodian Government and when the Co-Prime Ministers of the Cambodian Government, in a June 1997 letter to the Secretary-General, had requested United Nations assistance.

11. The speaker stressed that, although the Cambodian people and Government wished the establishment of peace and democracy and appreciated the international community's help in that area, Cambodia was a sovereign State.

12. **Ms. Borzi Cornacchia** (Italy), speaking on behalf of the European Union, asked the Special Representative of the Secretary-General for Human Rights in Cambodia what obstacles hindered judicial reform in Cambodia, whether he thought it was possible to set up in the medium term a system of legal assistance for providing basic services to the poor of that country and what difficulties remained to be surmounted in that connection. The speaker also inquired whether the Special Representative had established contact with the treaty bodies in order to improve their relations with Cambodia; whether, where appropriate, an action program had been adopted; and by what means he planned to promote the implementation of the recommendations of those bodies, particularly the Committee against Torture, by the Cambodian Government.

13. Lastly, concerning the 16 June 2003 agreement on the prosecution, under Cambodian law, of suspects for crimes committed during the period of Democratic Kampuchea, the representative of Italy would like to know whether the Special Representative thought that the next step – namely the adoption of the principle of two extraordinary chambers by the General Assembly – would be taken quickly and, in the opposite case, what action he planned to take to facilitate the implementation of the agreement.

14. **Mr. Peter Leuprecht** (Special Representative of the Secretary-General for Human Rights in Cambodia), recalling that in Cambodia access to justice was not the same for the rich and for the poor, who made up the vast majority of the population, said that the lack of financial and human resources (hardly 200 practising lawyers in the entire country, most of them in the capital) constituted the main obstacle to the establishment of an adequate system of legal assistance. That situation could improve noticeably, if the Government and the donors gave priority to establishing such a system. Setting up a training centre for lawyers and interpreting less rigidly the eligibility criteria laid down in the charter of the Cambodian Bar would allow progress in that direction. Prime Minister Hun Sen had stated that he was fully aware of the urgency of the situation.

15. To accelerate the establishment of the legal assistance system, reliable data on the current situation of the justice sector in Cambodia had to be made available. Canada, Japan and France funded a relevant study. It was also necessary to launch a meaningful discussion on the type of system that best suited the country, one of the world's least developed economies. In fact, a conference on that subject, organized by the Cambodian Ministry of Justice and the Cambodian Bar, was scheduled to be held in late November 2003.

16. Concerning treaty bodies, the Special Representative referred to two major problems: Cambodia had not yet endorsed any of the individual communication procedures provided for in the treaties; and the Government did not seem prepared to submit

regularly periodic reports to the competent bodies or to implement their recommendations.

17. Concerning the prosecution of the Khmer Rouge, the Special Representative said that the country needed a genuine trial that – unlike the 1979 hearings, by no means a model of judicial proceedings – would fully respect basic international human-rights standards. The United Nations and the Cambodian Government, after ratification of their agreement by the National Assembly, would be able to address the issues of budget planning, personnel recruitment, training and information. An evaluation mission to Cambodia regarding those issues would be carried out on 8-13 December 2003. The process was vital to Cambodian society, because it would help its wounds to heal and allow it to come to terms with its recent history, and should therefore be accompanied by an effective information and awareness campaign.

18. **Mr. Ouch Borith** (Cambodia) indicated that the 1979 trial, regardless of its value according to the Special Representative, provided an indisputable proof that the Cambodian Government and people were resolved to bring the senior Khmer Rouge figures to trial.

19. **Ms. Rodriguez Pizarro** (Special Rapporteur of the Commission on Human Rights on the human rights of migrants), introducing her report (A/58/275), said that in 2003 she had visited Spain and Morocco. Despite growing interest in migration, the Special Rapporteur regretted the international community's gross ignorance of certain essential aspects of the phenomenon.

20. The Special Rapporteur observed that the migration policies and strategies implemented by the Member States did not ensure adequate protection of the fundamental rights of migrants. The twofold focus of those policies and strategies, namely, on the one hand, monitoring, security and counter-terrorism and, on the other hand, cooperation for development, did not allow combating illegal immigration effectively. There was growing polarization between countries of origin and countries of destination and, in view of the intensification of migration flows, the measures of migration control in the countries of transit and destination proved inadequate. Poverty and unequal opportunities were rising in the countries of origin, while corruption, sometimes associated with networks of smuggling migrants and trafficking in persons or combined with the exploitation of migrants and other violations, continued with impunity. The Special Rapporteur therefore urged all countries concerned, whether of origin, transit or destination, to cooperate in promoting development. She stressed that migration policies, which sometimes neglected the migrants' needs (in the areas of health care, psychological support, legal assistance and consular protection), should provide for legal and humanitarian training of law enforcement officers and civil servants handling migrants.

21. The trafficking in persons and smuggling of migrants, of which women were the main victims, continued to be serious problems. Referring to the often deplorable working conditions, social life and physical and mental health of the migrants, the speaker said that her next report to the Commission on Human Rights would cover that subject.

22. The detention of migrants regardless of their personal situation (disregarding their being young, victims of trafficking in persons or possible prey to traffickers) and the problem of unaccompanied minor migrants, who sometimes were expelled in the absence of any social-service or family representative, constituted further objects of concern. Particular attention should be paid to the circumstances surrounding the expulsion of children and women.

23. The governments, civil society and the migrants should participate in formulating programmes for their reintegration into the countries of origin and destination. The irregular situation of certain migrants constituted an aggravating factor. In all stages of a migration case, including expulsion, the rights of undocumented immigrants merited a protection equal to the protection of the rights of other human beings. The Special Rapporteur welcomed the entry into force, on 1 July 2003, of the International Convention on Protection of Rights of All Migrant Workers and Members of Their Families, and invited all States to ratify it and the two Additional Protocols to the United Nations Convention against Transnational Organized Crime.

24. The Special Rapporteur concluded by stressing the fact that the fight against migration-related problems (illegal immigration, smuggling migrants, trafficking in persons and related human rights violations) required cooperation among all competent bodies in all countries concerned: wealthy and poor

nations and the countries of destination, transit and origin.

25. **Ms. Borzi Cornacchia** (Italy) pointed out that the European Union, on whose behalf she spoke, was currently seeking the best possible solution to the problem of misuse of asylum procedures by migrants wishing to prolong their stay in the countries of destination. The speaker requested the Special Rapporteur to explain the distinction drawn between smuggling migrants and trafficking in persons and asked whether she considered the relevant educational programmes and the national, regional and international initiatives as efficient tools for combating both phenomena. The representative of Italy also requested the Special Rapporteur to clarify the difference between permanent and temporary migrants and to say what she thought of policies aimed at the organized repatriation of illegal immigrants to their country of origin.

26. **Ms. Nguyen** (Canada) said that her country, the first State visited by the Special Rapporteur, warmly encouraged the other States to invite her. She asked the Special Rapporteur whether she was satisfied by the extent to which the States were implementing her recommendations. Welcoming the fact that the United Nations Convention against Transnational Organized Crime had come into effect and the imminent entry into force of its two Additional Protocols, she invited the States to sign, ratify and implement those instruments urgently. She also requested the Special Rapporteur to assess the level of the commitment of States to international cooperation against organized crime and inquired whether she thought that the States were putting forth actual efforts to combat such criminal activities.

27. **Ms. Olamendi** (Mexico) concurred with the Special Rapporteur that the detention of migrants, which was prompted by administrative considerations, gave cause for grave concern.

28. Some countries had amended their immigration laws on security grounds. The representative of Mexico inquired whether those amendments respected migrants' fundamental rights.

29. The speaker suggested that the Special Rapporteur should cooperate more closely with the United Nations Office on Drugs and Crime concerning the entry into force of the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Suppress, Prevent and Punish Trafficking in Persons, especially Women and Children.

30. Lastly, the speaker observed that the Inter-American Court of Human Rights had clearly pointed out in its advisory opinion OC-18 that the migratory status of a person could not be used to deny the rights of workers. The representative of Mexico would like to know if that important opinion of the Court could be used for evaluating the standards of protection of migrant workers.

31. **Mr Traoré** (Burkina Faso) said that his country, place of origin of many immigrants, was concerned for their fundamental rights. In February 2003, Burkina Faso had ratified the International Convention on Protection of Rights of All Migrant Workers and Members of Their Families, although the working documents of the current session did not provide that information.

32. Since the Special Rapporteur had made several references to regular and irregular migration, the representative of Burkina Faso asked whether the regularity or irregularity of migration affected the migrant's rights and whether a State was entitled to subject a migrant to acts of violence or to violate his or her rights on the grounds of illegal presence on its territory.

33. One element that did not seem prominent enough in the report was the exposure of violations. The most elementary rights of migrants were frequently violated and it would have been appropriate that the Special Rapporteur should denounce those violations on behalf of the victims.

34. In view of a State's obligation to cooperate with special rapporteurs, the Government of Burkina Faso had invited the Special Rapporteur to visit the country in order to review the situation concerning the fundamental rights of migrants.

35. **Ms. Rodriguez Pizarro** (Special Rapporteur of the Commission on Human Rights on the human rights of migrants), replying to the representative of Italy on the relation between migration and seeking asylum, said that she had had to consider two fundamental aspects of the issue: the protection of migrants' human rights under migration-flow management policies, and the status of asylum seekers not covered by the provisions of the 1951 Convention. In the field, she had essentially observed three types of situations:

- in many cases, an application for asylum was a migrant's only way of regularizing his or her situation;
- for fear or from procedural ignorance, many asylum seekers did not follow the procedures required; and
- unfortunately, the civil servants responsible for immigration-related issues ignored the procedures to be followed by asylum seekers, while the Office of the United Nations High Commissioner for Refugees (UNHCR) was absent from border authority units and in the regions where its presence would have been essential. The Member States of the United Nations should ensure compliance with the 1951 Convention and their civil servants should know the procedures and also the specific situation prevailing in the countries of origin of asylum seekers. Civil servants were not entitled to assume that asylum seekers were not sincere. Regrettably, the reality in the field was not what it should have been and the attitude of the media did not help to correct it.

36. Replying to a question by the representative of Burkina Faso related to that point, the Special Rapporteur pointed out that the dignity of illegal migrants should be respected and they should not be subjected to discriminatory measures or mistreated. Administrative measures, possibly culminating in escorting the immigrants back to the border, should be taken in cooperation with the countries of origin. There was apparently a lack of human-rights culture in the area of migration. Such important actors as the media and even some non-governmental organizations (NGOs) considered all migrants to be asylum seekers and should remain in the country of first asylum – which was inaccurate. The migration-flow management process was inadequate and surrounded by uncertainty detrimental to a proper application of asylum-seeking procedures and the principle of non-refoulement.

37. Referring to her earlier reply to the representative of Italy, the Special Rapporteur said that as a result of UNHCR absence from the field, law enforcement agents – often insufficiently trained – were left to act alone and that made the situation of asylum seekers even more precarious.

38. The treatment of migrants in an irregular situation – identification checks, detention and expulsion – frequently disregarded the precepts of human dignity and personal respect and the requirement to ensure the consular protection of migrants.

39. Concerning the smuggling of migrants and trafficking in persons, the Special Rapporteur said that she carried out her mandate on the basis of the relevant international standards. The Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime defined the smuggling of migrants as follows: "'Smuggling of migrants' shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident"". The Protocol to Suppress, Prevent and Punish Trafficking in Persons especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime defined trafficking in persons as follows (article 3): "(a) 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs; ... (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article."

40. The difference between the two phenomena was clear from the two passages. Contrary to smuggling, trafficking involved recourse to force and could occur through regular migrations. In trafficking, the emphasis was put on exploitation after migration, while smuggling involved facilitating the illegal entry of a person in a country.

41. The Special Rapporteur was preoccupied with linkages between smuggling and trafficking. Migrants using the services of traffickers could find themselves

in a perilous situation because of their illegal presence in a given country.

42. It was not enough to organize courses, seminars and regional conferences on those problems. Talk should be replaced by specific proposals and agreements to terminate the impunity of organized crime networks which, despite security measures at the borders, were still able to get migrants through illegally. It was also necessary to combat domestic migration-related corruption.

43. The Special Rapporteur pointed out that she drew a distinction between temporary and permanent migrants, although that was not stated in her report.

44. To ensure an orderly repatriation of migrants, the signature of agreements between the countries of origin and the countries of destination was essential. It was also necessary to adopt specific measures in order to define the procedures of repatriation, escorting back to the borders or expulsion. If the countries of destination closed their borders without consulting the countries of transit or origin and coordinating their activities with them, that could only favour the development of networks for smuggling migrants and trafficking in persons, as it was currently happening. Mention should be made, however, of some encouraging examples in that area – for instance "Dialogue 5 + 5", which involved cooperation between the European Union and the countries of northern Africa.

45. Replying to the representative of Canada, the Special Rapporteur noted that the reports that she drew up after her various missions were prepared as a follow-up to requests by the Commission on Human Rights. Her activity was aimed not only at seeking ways and means to ensure respect for migrants' rights and their return to their country of origin under conditions of dignity, but also at getting the very principle of such practices adopted within the United Nations.

46. The Special Rapporteur said that she did not know whether genuine political resolve existed in the countries that had ratified the Convention. It was essential that, upon the entry into force of the Convention and the two Protocols, national legislations should be adapted to reflect the provisions of those very important instruments.

47. In reply to the representative of Mexico, the Special Rapporteur said that advisory opinion OC-18 of the Inter-American Court of Human Rights should in fact be taken into consideration.

48. Replying to another question by the representative of Burkina Faso, the Special Rapporteur said that Burkina Faso, as a country of origin of migrants, including illegal ones, should enter into a genuine dialogue with the countries of transit and destination. The countries of origin should strengthen consular protection of their citizens. The countries of destination frequently complained to the Special Rapporteur about the lack of cooperation from the consulates of the countries of origin. A mission to Burkina Faso was under study with the Secretariat. The annex to the Special Rapporteur's report included many allegations and accusations and, where appropriate, the replies of the governments concerned.

49. *Mr. Priputen (Slovakia), Vice-Chairman, took the Chair.*

50. The **Chairman** said that the Committee had completed its work for the afternoon meeting.

The meeting rose at 4.40 p.m.